



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with Eagle-Elsner, Inc. for the
Highland Paving Package**

Purpose/Outcomes	This Contract will resurface 18.1 miles of roads. It will resurface portions of Upper Highland Road, Ferguson Road, Carus Road, and Lower Highland Road
Dollar Amount and Fiscal Impact	Total contract value is \$5,065,021.50
Funding Source	Upper Highland Road: Road Fund; Ferguson Road: Community Road Fund; Carus Community Road Fund; and Lower Highland Road: Road Fund
Duration	Contract execution through December 31, 2020
Previous Board Action	None
Strategic Plan Alignment	This project will provide strong infrastructure and ensure safe communities by maintaining the County's existing road infrastructure.
Counsel Approval	May 12, 2020
Contact Person	Vince Hall, Project Manager 503-650-3210

Background:

This contract will resurface 18.1 miles of road along four (4) road sections. Sections of road include: (1) Upper Highland Road between the Beaver Creek Road and Highway 211. Upper Highland Road has an average daily traffic of 1,500 vehicles per day and is classified as a minor arterial. (2) A portion of Ferguson Road between Beaver Creek Road and the end of County maintenance. Ferguson Road has an average daily traffic of 1,030 vehicles per day and is classified as a local. (3) A portion of Carus Road between Beaver Creek Road and Lower Highland Road. Carus Road has an average daily traffic of 225 vehicles per day and is classified as a local. (4) Lower Highland Road between the Beaver Creek Road and Upper Highland Road. Lower Highland Road has an average daily traffic of 1,475 vehicles per day and is classified as a minor arterial. This contract will include placing asphalt; grinding asphalt; placing pavement markings and striping; installing, maintaining, and removing temporary work zone traffic control measures; and performing additional incidental work as called for by the specifications and plans.

The project work is anticipated to begin immediately following contract signing. Substantial completion will be not later than September 25, 2020, with final completion no later than December 31, 2020.

This will be the first paving contract to use Community Road Fund.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on March 3, 2020. Bids were opened on April 16, 2020. The bid was advertised as a base bid with an additional alternative. The base bid included Upper Highland, Ferguson Road, and Carus Road. The additional alternative included Lower Highland Road. The County received three (3) base bids: Eagle-Elsner, Inc., \$3,992,348.75; Granite Construction, Co., \$5,984,984.00; and Knife River Corporation, \$5,064,345.55. After review of the base bids, Eagle-Elsner, Inc. was determined to be lowest responsive bidder.

Upon acceptance of the base bid, DTD elected to accept the bid alternative to include Lower Highland Road for an additional \$1,072,672.75, increasing the contract total to \$5,065,021.50.

Recommendation:

Staff respectfully recommends that the Board approve and sign this public improvements contract with Eagle-Elsner, Inc. for the Highland Road Paving Package.

Sincerely,

Mike Bezner
Assistant Director of Transportation

Placed on the BCC Agenda _____ by Procurement



**CLACKAMAS COUNTY
PUBLIC IMPROVEMENT CONTRACT**

Contract #2841

This Public Improvement Contract (the "Contract"), is made by and between the Clackamas County, a political subdivision of the State of Oregon, hereinafter called "Owner," and **Eagle-Elsner, Inc.**, hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties and all County approvals have been obtained, whichever is later.

Project Name: **#2020-22 Highland Paving Package**

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **five million sixty-five thousand twenty-in dollars and fifty cents (\$5,065,021.50)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the Clackamas County General Conditions for Public Improvement Contracts (1/1/2020) ("General Conditions") referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Work will include paving Upper Highland Road, a portion of Ferguson Road, a portion of Carcus Road and Lower Highland Road between Beaver Creek and Upper Highland Road. The Contract Price is the amount contemplated by the Base Bid plus **Alternate #1**, as described in the accepted Bid.

Also, the following documents are incorporated by reference in this Contract and made a part hereof:

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Bid Form
- Performance Bond and Payment Bond
- Supplemental General Conditions
- Payroll and Certified Statement Form
- Addenda 1-5
- Instructions to Bidders
- Bid Bond
- Public Improvement Contract Form
- Clackamas County General Conditions
- Prevailing Wage Rates
- Plans, Specifications and Drawings

2. Representatives.

Contractor has named Richard Eagle as its Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicated below (check one):

Unless otherwise specified in the Contract Documents, the Owner designates Vince Hall as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

Name of Owner's Authorized Representative shall be submitted by Owner in a separate writing.

3. Key Persons.

The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the project concurrently. Once a replacement for any of these staff members is authorized, further

replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

Project Executive: Richard Eagle shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

Project Manager: Curtis Cooksey shall be the Contractor's project manager and will participate in all meetings throughout the project term.

Job Superintendent: David Elsner shall be the Contractor's on-site job superintendent throughout the project term.

Project Engineer: Curtis Cooksey shall be the Contractor's project engineer, providing assistance to the project manager, and subcontractor and supplier coordination throughout the project term.

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed

SUBSTANTIAL COMPLETION DATE: September 25, 2020

FINAL COMPLETION DATE: December 31, 2020

Time is of the essence for this Contract. It is imperative that the Work in this Contract reach Substantial Completion and Final Completion by the above specified dates.

5. Insurance Certificates.

In accordance with Section G.3.5 of the General Conditions and item 2 of the Supplemental General Conditions, Contractor shall furnish proof of the required insurance naming Clackamas County as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to Procurement@clackamas.us.

6. Tax Compliance.

Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

7. Confidential Information.

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner (“Confidential Information”). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Contract.

9. Counterparts.

This Contract may be executed in several counterparts, all of which when taken together shall constitute an agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

10. Integration.

All provisions of state law required to be part of this Contract, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Contract.

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

11. Liquidated Damages

The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor’s failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities.

11.1 Liquidated Damages shall be as follows if the actual Substantial Completion exceeds the required date of Substantial Completion:

11.1.1. \$1,000 per Calendar day past the Substantial Completion date.

12. Compliance with Applicable Law. Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract including, but not limited to, compliance with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default.

13. Responsibility for Taxes. Contractor is solely responsible for payment of any federal, state, or local taxes required as a result of the Contract or the Work including, but not limited, to payment of the corporate activity tax imposed under enrolled HB 3427 (2019 Oregon regular legislative session). Contractor may not include its federal, state, or local tax obligations as part of the cost to perform the Work.

Signature page to follow.

In witness whereof, Clackamas County executes this Contract and the Contractor does execute the same as of the day and year first above written.

Contractor DATA:
Eagle-Elsner, Inc.
P.O. Box 23294
Tigard, Oregon 97281

Contractor CCB # 27112 Expiration Date: 4/2/2022
Oregon Business Registry # 135009-13 Entity Type: DBC State of Formation: Oregon

Payment information will be reported to the IRS under the name and taxpayer ID# provided by the Contractor. Information must be provided prior to contract approval. Information not matching IRS records could subject Contractor to 28 percent backup withholding.

Eagle-Elsner, Inc.

Clackamas County Board of County Commissioners

Authorized Signature

Date

Chair

Date

Name / Title Printed

Recording Secretary

APPROVED AS TO FORM

County Counsel

Date